

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

MICHAEL MERRILL, GREGORY WEBER,  
JEFFREY CARPENTER on behalf of  
themselves and all other persons similarly  
situated; and UNITED STEEL, PAPER AND  
FORESTRY, RUBBER, MANUFACTURING,  
ENERGY, ALLIED INDUSTRIAL AND  
SERVICE WORKERS INTERNATIONAL  
UNION, AFL-CIO/CLC,

Plaintiffs,

v.

BRIGGS & STRATTON CORPORATION;  
GROUP INSURANCE PLAN OF BRIGGS &  
STRATTON CORPORATION, and DOES 1  
THROUGH 20,

Defendants.

Case No.: 2:10-cv-00700-LA

**PLAINTIFFS' MOTION TO  
COMPEL PRODUCTION OF DOCUMENTS**

Plaintiffs Michael Merrill, Gregory Weber, Jeffrey Carpenter, on behalf of themselves and all others similarly situated, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC ("USW") (together, Plaintiffs), by their attorneys, hereby move the Court to enter an order to compel Defendants Briggs & Stratton Corporation ("Briggs & Stratton"), Group Insurance Plan of Briggs and Stratton Corporation (the "Plan"), and Does 1 Through 20 (together, Defendants) to produce documents pursuant to Fed.R.Civ.P. 37(a)(1). Plaintiffs are filing this motion to compel only after repeatedly contacting Defense Counsel by mail and telephone requesting production of

the documents sought herein. In accordance with Local Rule 37, a certification of Plaintiffs' attempts to confer and resolve these issues with Defendants is attached to this motion.

Plaintiffs contend that Defendants are improperly withholding documents that should be produced on the basis of the fiduciary exception to the attorney-client privilege.

This motion is supported by a memorandum of law which fully explains Plaintiffs' position, along with the declaration of Plaintiffs' counsel Ellen Doyle, and exhibits attached thereto.

Wherefore, Plaintiffs respectfully request the Court to issue an order that:

1. Requires Defendants to produce for *in camera* inspection the documents identified as PRIV 0001; a portion of PRIV 0004; PRIV 0013; PRIV 0019; PRIV 0022; PRIV0032; PRIV 0037; PRIV 0038; PRIV 0040; PRIV 0042; PRIV 0043 on the privilege log attached as Exhibit 1 to the Declaration of Ellen M. Doyle in Support of Plaintiffs' Motion to Compel Production of Documents.
2. Requires Defendants to serve upon Plaintiffs copies of all documents that the Court finds are within the fiduciary exception to the attorney-client privilege within ten days of such order, even if that date falls after the close of discovery;
3. Such other and further relief as the Court deems to be just and proper.

Dated: September 24, 2013

s/ William T. Payne .

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was electronically filed with the Clerk of the Court using the ECF system on this day, which will send notification of such filing to the following counsel:

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Date: September 24, 2013

s/ William T. Payne .